IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Nanji v. Vikas Adhikari, Panchayat Samiti, Dungarpur & Anr.

S.B.CIVIL WRIT PETITION NO.2967/2003
under Articles 226 and 227 of the Constitution of India.

Date of Order : 22nd July, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sanjeet Purohit, for the petitioner.
Mr. S.N.Trivedi, for the respondents.

BY THE COURT :

By this petition for writ a challenge is given by the petitioner to the award dated 14.3.2002 passed by learned Labour Court, Udaipur in Labour Case No.104/97, Nanji v. Vikas Adhikari, Dungarpur.

The appropriate government under a notification dated 29.5.1997 referred an industrial dispute to the Labour Court, Udaipur in the terms as to whether termination of workman Nanji from the post of Handpump Mistri by Vikas Adhikari, Panchayat

Samiti, Dungarpur w.e.f. 28.10.1993 is just and valid, if not, then for what relief the workman is entitled? The Labour Court by award impugned answered the reference declaring the retrenchment of the petitioner from service illegal being in violation of provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947") but the relief of reinstatement was denied to the petitioner in view of provisions of the Rajasthan (Regulation of Appointment to Public Services and Rationalization of Staff) act, 1999 (hereinafter referred to as "the Act of 1999"). The Labour Court in lieu of reinstatement allowed a compensation in a tune of Rs.22,000/- to the workman. Being aggrieved by the same, present petition for writ is preferred by the petitioner before this Court.

The contention of the counsel for the petitioner is that the petitioner was retrenched by the respondent employer illegally after utilising his services for a period of more than 9 years and 7 months. The court below held the retrenchment bad in eye of law, therefore, there was no reason to deny the reinstatement in service. It is contended by the counsel for the petitioner that the reason given by the Labour Court for denying reinstatement lost its foundation as this Court declared the provisions of the Act of 1999 illegal in the case of Bhawani Singh & 17 Anr. v. State & Ors., reported in 2002(3) WLC

(Raj.) 728. In the said case this Court declared the provisions of Sections 11 and 19 of the Act of 1999 bad being ultravires to the Articles 14, 16, 21 ad 254 of the Constitution of India.

A reply to the writ petition is filed by the respondents stating therein that the Labour Court rightly denied reinstatement to the petitioner workman and allowed compensation in lieu thereof as the petitioner was working only on casual basis.

Heard counsel for the parties.

In the present case the relief of reinstatement was denied to the petitioner in view of provisions of the Act of 1999 on the count that the petitioner was a casual workman, as such he is not having any right to continue in employment. There is no dispute that so far as provisions prohibiting the regularisation of daily wagers under the Act of 1999 have already been declared illegal by Division Bench of this Court in the case of Bhawani Singh (supra), as such this reason to deny reinstatement is non existent.

The second reason given by the court below is that the petitioner was working with the respondents as a casual workman on daily rated basis, therefore, he is having no right to continue in employment.

I failed to understand as on what basis the Labour Court held that a casual workman working on daily wage basis is having no right to continue in employment. The petitioner was in employment of the respondents for a period of more than 9 years, therefore, he cannot be treated as a casual workman employed to discharge the duties of intermittent nature. It is true that he was getting the wages on daily wage basis but the mode of payment does not disentitle a workman to remain in employment. The mode of payment is not a factor deciding the nature of employment.

Be that as it may, precisely the controversy in the present writ petition is whether the Labour Court was right in denying the relief of reinstatement to the petitioner specially in the circumstances when his retrenchment from service was found in violation of mandatory provisions of Industrial Disputes Act, 1947.

A Division Bench of this Court in DBCivil Special Appeal (Writ) No.75/2003, Dal Chand v. Judge, Labour Court & Ors., decided on 16.12.2003, after considering various judgments of Hon'ble Supreme Court prescribed broad guidelines pertaining to the circumstances in which compensation can be granted in lieu of reinstatement which reads as under:-

"(1)The Tribunal in each case keeping in mind the objectives of the industrial adjudication in the spirit of fairness and justice confront with the question whether the circumstances of the case require that an exception should be made and compensation will meet the ends of justice.

(2)Efforts should be made to reconcile conflicting interests of the employer and the employee. The employee is entitled to protection against victimisation or unfair labour practice and as such the protection of service. On the other hand an employer cannot be insisted upon to keep a workman in employment whose presence shall be prejudicial to the industrial peace and growth of the industry.

(3)A distinction must be made between termination, dismissal or removal held to be wrongful as a result of malafide or colourable exercise of powers amounting to victimisation or unfair labour practice and wrongful termination or dismissal on account of technical approach of law or violation of principle of natural justice or any other just ground. In case of former, ordinarily relief should be granted of reinstatement with full back wages. Even if compensation has to be awarded, it must be heavy so as to protect the workman from victimisation of the employer. In the later case a just compensation may be awarded to meet the ends of justice.

(4)A elapse of long period since termination may be good ground for awarding compensation in lieu of reinstatement and back wages.

(5)Feasibility of reinstatement in the changed circumstances of the Industry.

(6)Comparative hardship of the employer and the employee particularly with reference to financial implications.

(7)After a finding is recorded with respect to the legality of the order of termination, dismissal or removal, if the parties or either of the parties so wish should be given an opportunity to address including loading the evidence oral or documentary on the question of grant of documentary on the question of grant of relief by way of reinstatement or compensation in lieu of reinstatement."

From reading of guidelines it is apparent that these pertain to the cases of dismissal or removal. It is further relevant to note that the Division Bench while providing the guidelines above considered various judgments of Hon'ble Supreme Court. All those judgments relate to the cases of dismissal or removal but not of the retrenchment. In the case of dismissal and removal or discharge otherwise Labour Court is having ample power to modify the relief in view of Section 11-A of the Act of 1947, however, no such power is available to Labour Court to modify the relief in the event a retrenchment is found illegal.

The legislature has not provided any power to Labour Court to award the relief at its own in the case of a retrenchment. It is well settled that if a retrenchment is void ab-initio then the relief of reinstatement is its natural consequence. Hon'ble Supreme Court in the case of Mohan Lal v. The Management of M/s Bharat Electronics Ltd., reported in AIR 1981 SC 1253, held as under:-

> "The last submission was that looking to the record of the appellant this Court should not grant reinstatement but award compensation. If the termination of service is ab initio void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as Ruby General Insurance Co. Ltd. v. P.P. Chopra, (1970) 1 Lab LJ 63 and Hindustan Steel Ltd., Rourkela v. A.K.Roy, (1970) 3 SCR 343: (AIR 1970 SC 1401) it was held that the Court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally

> accepted approach of the Courts in the field of social justice and we do not propose to depart in this case."

The present one is also a case of illegal retrenchment and not of removal, dismissal or discharge otherwise. The employer effected retrenchment of the petitioner from service in violation of provisions of Section 25-F of the Act of 1947. Accordingly, the retrenchment is ab-initio void and inoperative.

In view of it the petitioner is required to be treated in service ignoring the retrenchment which is void ab-initio in eye of law. Meaning thereby, the reinstatement is notional and the petitioner for all purposes is required to be deemed in services from the date of his initial appointment.

In my considered opinion the Labour Court erred materially while not treating the petitioner in continuous employment of the respondents irrespective of the fact that his retrenchment was found void ab-initio being in violation of the provisions of Section 25-F of the Act of 1947. The Labour Court, therefore, also erred while awarding a compensation in a tune of Rs.22,000/- in lieu of reinstatement of the petitioner.

In view of whatever discussed above, the writ petition is allowed. The award impugned dated 14.3.2002 passed by Labour Court, Udaipur in Labour

Case No.104/97, Nanji v. Vikas Adhikari, Dungarpur is modified to the extent it allows compensation in lieu of reinstatement by directing the respondents to reinstate the petitioner in service with 40% of back wages for the period the petitioner workman remained out of employment as a consequence of his retrenchment from service w.e.f. 28.10.1993.

(GOVIND MATUR),J.

kkm/ps.